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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,860	08/27/2001	Lynnwood C. Cook	COOK 3.2	3207

7590

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EXAMINER

GRILES, BETHANY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 04/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/939,860

Applicant(s)

COOK, LYNNWOOD C.

Examiner

Bethany L. Griles

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 6 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments, see Response A, filed 12/10/02, with respect to the rejection(s) of claim(s) 1-3, 5-9, 11, 14, and 15 under 103a have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 103 as detailed below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, and 6-15 are rejected under 35 U.S.C. 103(a) as obvious over Ivy Acres website ([www.ivyacres.com/ivbiodegradable.html](http://www.ivyacres.com/ivbiodegradable.html)). in view of Reis et al. (*Evaluation of composted pine bark and carob pods as components for horticultural substrates*; abstract; Proceedings of the International Symposium on Growing Media and Plant Nutrition in Horticulture; 1 October 1995).

Regarding claims 1 and 14, the Ivy Acres website discloses a plant shell formed of biodegradable constituents including a particulate organic base material and a water responsive glue (paragraph 1, lines 1-3); the shell molded with sufficient porosity to

permit root and water penetration (see photo, page 1). This structure would necessarily disintegrate rapidly in the presence of water.

Regarding claims 2 and 15, Ivy Acres discloses a major portion of the shell comprises the particulate organic base material in combination with organic ingredients to enhance water retention (paragraph 3, lines 1-3).

Regarding claim 3, Ivy Acres discloses the shell ingredients are compressed together sufficiently that the shell holds its shape when dry, but permits root and water permeation (paragraph 1, line 3, and paragraph 3, lines 1-3).

Regarding claim 6, Ivy Acres does not disclose a time-release fertilizer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include time release fertilizer to the shell, as the use of time release fertilizer is notoriously well known in the art, and it would be desirable to expose the fertilizer to the water and root permeable effects of the shell. Also, as the organic matter of the shell disintegrates, it will release nutrients over time.

Regarding claim 7, Ivy Acres discloses a standard size plant pot (see photo, page 1).

Regarding claim 8, Ivy Acres discloses a standard size interior of the plant pot (see photo, page 1).

Regarding claim 9, Ivy Acres discloses sufficient nutrients and water retention characteristics (paragraph 3, lines 1-3).

Regarding claim 10, Ivy Acres discloses a natural rubber adhesive (paragraph 1, line 3).

Regarding claim 11, Ivy Acres discloses that the structure breaks down "substantially" in 10 days (paragraph 3, line 9).

Regarding claim 12, Ivy Acres discloses that the shell retains water, as the act of water moving through the pot (paragraph 3, line 1) would necessitate water being present in the shell.

Ivy Acres does not disclose that the water retention is at 20%.

The applicant does not explain why a 20% water retention rate is vital to the success of the invention; therefore, there is no criticality to the range claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include some water retention capability of the shell in order to make moisture available to the plant roots.

Regarding claim 13, Ivy Acres discloses that the shell retains water, as the act of water moving through the pot (paragraph 3, line 1) would necessitate water being present in the shell.

Ivy Acres does not disclose that the water retention is at 30%-50%.

The applicant does not explain why a 30-50% water retention rate is vital to the success of the invention; therefore, there is no criticality to the range claimed.

Claims 4, 5, and 16-18 are rejected under 35 U.S.C. 103(a) as obvious over Ivy Acres website ([www.ivyacres.com/ivbiodegradable.html](http://www.ivyacres.com/ivbiodegradable.html)). in view of Reis et al. (*Evaluation of composted pine bark and carob pods as components for horticultural substrates*; abstract; Proceedings of the International Symposium on Growing Media and Plant Nutrition in Horticulture; 1 October 1995).

Regarding claim 4, Ivy Acres discloses that the shell comprises particulate base material (col 1, line 4).

Ivy Acres does not disclose that the particulate base is at least 50% southern pine bark or rice hulls.

Reis et al. disclose a 1:3 ratio of pine bark.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the use of pine bark to the invention of Ivy Acres, as pine bark would be a readily available substitute to the coir mentioned. The article states that the coir is superior to paper mache and peat, but does not comment at all on the use of pine bark.

Regarding claim 5, Ivy Acres does not disclose manure and topsoil.

Reis et al. disclose peat moss (col 4, line 1), manure (paragraph 4, line 3), and top soil (paragraph 2, line 1), as composting creates topsoil.

Regarding claim 16, Ivy Acres discloses all but the use of pine bark and time release nutrients.

As any organic material breaks down, it will release nutrients over time. Also, Reis et al. disclose the use of pine bark (paragraph 1, line 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute readily available pine bark for the "coir" described in the Ivy Acres reference, and these two items are equivalent.

Regarding claim 17, Reis et al. disclose the presence of pine bark, peat moss, manure, and topsoil.

Reis et al. do not disclose the percentages described by the applicant.

The applicant does not explain why the mixture of these percentages is vital to the success of the invention; therefore, there is no criticality to the range claimed.

Regarding claim 18, Reis et al. disclose the presence of pine bark, peat moss, manure, and topsoil.

Reis et al. do not disclose the percentages described by the applicant.

The applicant does not explain why the mixture of these percentages is vital to the success of the invention; therefore, there is no criticality to the range claimed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703.308.2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703.306.4196 for regular communications and 703.305.3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.5771.

*Robert P. Swiatek*  
ROBERT P. SWIATEK  
PRIMARY EXAMINER  
ART UNIT 333 3643